

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CHRISTINA PAOLI

Plaintiff,

v.

**CITY OF LEWES, DELAWARE,
LEWES POLICE DEPARTMENT,
and BRUCE RITTER,**

Defendants.

CIVIL ACTION No. 07-419

**DEFENDANTS, CITY OF LEWES, LEWES POLICE DEPARTMENT AND BRUCE
RITTER'S ANSWER TO PLAINTIFF'S COMPLAINT WITH SEPARATE DEFENSES**

Defendants, City of Lewes, Lewes Police Department and Bruce Ritter, by and through their counsel, Marshall, Dennehey, Warner, Coleman & Goggin, hereby respond to Plaintiff's Complaint as follows:

1. Inasmuch as this allegation within Plaintiff's Complaint constitutes a legal conclusion as opposed to factual allegations, no response thereto is necessary.
2. Inasmuch as this allegation within Plaintiff's Complaint constitutes a legal conclusion as opposed to factual allegations, no response thereto is necessary.
3. Denied. After reasonable investigation, Answering Defendants are unable to admit or deny the allegations within this paragraph of Plaintiff's Complaint and must therefore deny same, demanding strict proof thereof at the time of trial.
4. Admitted.
5. Admitted.

6. (Omitted from Plaintiff's Complaint).

7. Admitted.

8. Inasmuch as this allegation within Plaintiff's Complaint constitutes a legal conclusion as opposed to factual allegations, no response thereto is necessary.

9. Inasmuch as this allegation within Plaintiff's Complaint constitutes a legal conclusion as opposed to a factual allegation, no response thereto is necessary.

10. Inasmuch as this allegation within Plaintiff's Complaint constitutes a legal conclusion as opposed to a factual allegation, no response thereto is necessary.

11. Denied as pled. It is specifically denied that Answering Defendants were in any way negligent or engaged in any liability-producing conduct (including committing any violation of rights secured to the Plaintiff by the Constitution of the United States). It is further denied that any conduct on the part of Answering Defendants was the proximate cause of any injury or damages to the Plaintiff.

12. Denied as pled.

WHEREFORE, Answering Defendants hereby request that this Honorable Court dismiss Plaintiff's Complaint and award costs and fees in favor of Answering Defendants.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted and Answering Defendants reserve the right to move for the dismissal of any and/or all of the allegations within Plaintiff's Complaint on this basis at any time prior to or during trial.

SECOND SEPARATE DEFENSE

Defendants, Town of Lewes and Lewes Police Department, cannot be held liable for punitive damages as a matter of law and these Defendants reserve the right to move for the dismissal of these claims pursuant to Fed. R.C.P. 12 (b)(6) at any time prior to trial.

THIRD SEPARATE DEFENSE

Answering Defendants breached no duty owed to Plaintiff.

FOURTH SEPARATE DEFENSE

Plaintiff's cause of action is barred by the applicable Statutes of Limitations.

FIFTH SEPARATE DEFENSE

Plaintiff has shown no valid civil rights violations and therefore has failed to meet the statutory requirements of 42 U.S.C.S 1981, 1983, 1985, 1986 or 1988. Plaintiff has also failed to demonstrate the validity of jurisdiction under 28 U.S.C.S. 1927 nor under the Fourth or Fourteenth Amendments to the United States Constitution.

SIXTH SEPARATE DEFENSE

If Defendants injured the Plaintiff as alleged in the Complaint, the Plaintiff was guilty of contributory and/or comparative negligence in that she failed to heed the advice given by the Defendants. This negligence on the part of Plaintiff contributed to the alleged injury of the Plaintiff.

SEVENTH SEPARATE DEFENSE

If the Plaintiff was injured in any way it was not as a result of actions or in actions of Answering Defendants, rather that injury was the result of the Plaintiff's known assumption of the risk.

EIGHTH SEPARATE DEFENSE

As a Civil Rights Complaint, this Complaint is insufficient and therefore must be dismissed. The allegations of the Complaint are broad and conclusory and fail to state sufficient facts in support of its conclusions. In this Circuit, plaintiffs in Civil Rights actions are required to plead facts with specificity. *Negrich v. Horn*, 379 F.2d 213 (Third Circuit, 1967), see also *Rotolo v. Borough of Charleroi*, 522 F.2d 920 (Third Circuit, 1976).

NINTH SEPARATE DEFENSE

Plaintiff's Complaint fails to state a cause of action upon which relief may be granted under F.R.C.P. 12(b)(6).

TENTH SEPARATE DEFENSE

Plaintiff is liable to Defendants for sanctions under Rule 11 for bringing this frivolous claim. Answering Defendants herein demand damages in the form of costs pursuant to 28 U.S.C. 1928. No one after reasonable inquiry could form a reasonable belief that the pleading is warranted by the existing law, nor is there any good faith argument for the extension, modification or reversal of existing law. See, *Eavenson, Auchmuty and Greenwald v. Holtzman*, 775 F.2d 535 (Third Circuit, 1985). c.f. *Haines v. Kerner*, 404 U.S. 519, 92 Set. 594, 30 Led. 2nd 652 (1972).

ELEVENTH SEPARATE DEFENSE

Individual defendant hereby asserts the defense of qualified immunity as articulated in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and subsequent decisions.

TWEVETH SEPARATE DEFENSE

Individual defendant asserts he has not violated clearly established law and at all times concerned with this litigation acted in a manner which was proper, reasonable, lawful and in the

exercise of good faith and, as such, enjoy not only qualified immunity, but a right not to go to trial as articulated in *Mitchell v. Forsyth*, 105 S.Ct. 2806 (1985).

THIRTEENTH SEPARATE DEFENSE

Individual defendant asserts, in the alternative, either that under the facts alleged or to be developed that he was acting individually and within the confines or boundaries of qualified immunity or, alternatively, that to the extent that he is named in his official capacity, those claims should be dismissed. *Brandon v. Holt*, 469 U.S. 464 (1985); *Gregory v. Chechi*, 843 F.2d 111 (1988).

FOURTEENTH SEPARATE DEFENSE

Plaintiff's claim for punitive damages asserted against the individual defendant in his official capacity are barred by state and federal law. *City of Newport v. Fact Concerts, Inc.*, 101 S.Ct. 2748 (1987).

FIFTHTEENTH SEPARATE DEFENSE

Even if it is judicially determined that the individual defendant acted negligently and violated clearly established law, he remains immune from the imposition of damages pursuant to *Daniels v. Williams*, 106 S.Ct. 662 (1986) and *Davidson v. Cannon*, 106, S.Ct. 668 (1986).'

SIXTEENTH SEPARATE DEFENSE

It is averred that probable cause existed for the arrest of Plaintiff.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff was not subjected to the use of excessive force.

EIGHTEENTH SEPARATE DEFENSE

It is averred that collateral estoppel and/or *res judicata* apply to bar litigation of issues formally adjudicated concerning Plaintiff's actions.

NINETEENTH SEPARATE DEFENSE

It is averred that Plaintiff was prosecuted in good faith and without malice.

TWENTYTH SEPARATE DEFENSE

Defendants herein assert all other defenses available to them under the Civil Rights Act of 1871.

TWENTYFIRST SEPARATE DEFENSE

The Complaint as pleaded is in general language which fails to identify specific incidents and actions of Answering Defendants upon which a claim for relief may be grounded. (F.R.C.P. 12(b)(6)).

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

Date: July 24, 2007

/s/ Daniel A. Griffith DE ID No. 4209
DANIEL A. GRIFFITH, ESQUIRE (No. 4209)
1220 North Market Street, 5th Floor
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Wilmington, DE 19899-8888
(302) 552-4300
Email: dagriffith@mdwcg.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CHRISTINA PAOLI,	:	
	:	
Plaintiff,	:	CIVIL ACTION No. 07-419
	:	
v.	:	
	:	
CITY OF LEWES, DELAWARE, LEWES POLICE DEPARTMENT, and BRUCE RITTER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I, Daniel A. Griffith, Esquire hereby certify that on the date indicated below a true and correct copy of Defendants, City of Lewes, Lewes Police Department and Bruce Ritter's Answer with Separate Defenses to Plaintiff's Complaint were forwarded to the below named addressee via U.S. Mail, postage prepaid and electronic filing:

Christina Paoli
P.O. Box 170
600 Third Street
Rehoboth Beach, DE 19971

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

/s/ Daniel A. Griffith, Esquire DE ID 4209
DANIEL A. GRIFFITH, ESQUIRE
Delaware Bar I.D. No. 4209
1220 N. Market Street
P.O. Box 8888
Wilmington, DE 19899-8888
(302) 552-4300
Attorney for Defendants

Dated: July 24, 2007

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Christina Paoli

(b) County of Residence of First Listed Plaintiff Sussex

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

City of Lewes, Delaware, Lewes Police Department and Bruce Ritter

County of Residence of First Listed Defendant Sussex

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Daniel A. Griffith, Esquire, 1220 N. Market St., Wilmington, DE 19899

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicates Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place An "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen of Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits. <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 195 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury – Med Malpractice <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing / Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983

Brief description of cause:

Wrongful Arrest – 4th Amendment**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

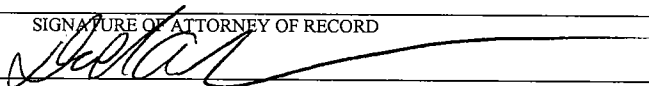
(See instructions) JUDGE _____

DOCKET NUMBER _____

DATE

July 24, 2007

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____